EU investor protection regulation and private law

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Propositions belonging to the PhD thesis

EU Investor protection regulation and private law
A comparative analysis of the interplay between MiFID & MiFID II and liability for investment losses

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1. Private law norms governing the liability of investment firms to compensate retail investors for investment losses fall outside the harmonisation scope of MiFID and MiFID II.

2. The European Commission is precluded from using its delegated rule-making power to introduce a principle of civil liability under MiFID II.

3. ESMA's soft law is capable of *de facto* bringing private law within the MiFID and MiFID II's harmonisation scope.

4. MiFID and MiFID II provide for minimum harmonisation of the conduct of business rules.

5. The interaction between the MiFID and MiFID II conduct of business rules and private law norms should be guided by the complementarity model. This model preserves the autonomy of private law norms governing the liability of investment firms towards investors, while presupposing that courts should have regard to the regulatory norms when adjudicating individual disputes.

6. National private law has a great potential to contribute to retail investor protection if the civil courts are up to the challenge of integrating the regulatory dimension into judicial reasoning.

7. The financial institutions' "special duty of care" developed by the *Hoge Raad* (Dutch Supreme Court) is far from special.